

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Petition of

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AT&T CORP. and ALASCOM, INC.

For Elimination of Conditions Imposed
By the FCC on the AT&T-Alascom Relationship

CC Docket No. 00-46

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FEDERAL COMMUNICATIONS COMMISSION
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OPPOSITION OF GENERAL COMMUNICATION, INC.

Joe D. Edge
Tina M. Pidgeon
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 842-8812

Its Attorneys

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SUMMARY

General Communication, Inc. (“GCI”) opposes the Petition for Elimination of Conditions filed by AT&T Corp. (“AT&T”) on behalf of itself and Alascom, Inc. (“Alascom”). AT&T has failed to show any changed legal, regulatory, or factual circumstances since the Commission affirmed the continued applicability of the same conditions in the proceeding to reclassify AT&T. Contrary to AT&T’s claim that elimination of the conditions will be beneficial for Alaska consumers, preservation of those very same conditions are necessary for making competitive options available to all Alaska consumers.

Alascom has a monopoly for facilities-based interstate and intrastate interexchange services for the Alaska Bush. Although GCI has a temporary and partial waiver to offer facilities-based services to less than one-third of these locations, only Alascom has had permanent, continuous authority to serve all of Alaska. Competing interexchange carriers are able to offer service at least on a resale basis under Alascom’s obligation to offer transport and switching interstate interexchange common carrier services under Tariff 11. Each of the conditions that AT&T seeks to eliminate are associated with Alascom’s offering under that tariff. Thus, grant of the requested relief will impair competition by eliminating the means by which competitive carriers provide certain services in Alaska.

In fact, AT&T’s Petition warrants very different Commission actions than those actions requested by AT&T. GCI and AT&T agree that the Commission should repeal the Bush policy. However, the Commission should also grant permanent earth station authorizations to GCI to serve these areas and preempt the Alaska statutory prohibition on facilities-based competition in the Bush. The Commission should require that Alascom continue to offer services under Tariff 11 until such time that the Commission may determine that sufficient facilities-based

competition has developed in the Bush. If Tariff 11 is withdrawn at the same time that the Bush restriction is lifted, AT&T will undoubtedly secure a de facto monopoly for these services. GCI also requests that the Commission complete its investigation of Alascom's Tariff 11, including the Cost Allocation Plan, and upon completion, permit Alascom to file future rates under price cap regulation.

In addition, the Commission should investigate AT&T's claim that it is withholding certain services from Alaska, contrary to Section 253(b)(3) of the Communications Act. The Commission further should deny the Petition in its other capacities as an Application under Section 214 for authority to discontinue Alascom CCS services and as a Petition for Waiver of the Commission's subscriber carrier selection rules. The Petition does not satisfy even the most basic relevant requirements for such requests under law and regulation. Finally, AT&T's request for relief from conditions arising out of the Alaska Market Order should be referred to an Alaska Federal-State Joint Board. As was the case in CC Docket No. 83-1376, a decision on the AT&T Petition will also involve consideration of the effects any changes will have on intrastate rates and service in Alaska.

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ATTACHMENT

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OPPOSITION OF GENERAL COMMUNICATION, INC.

General Communication, Inc. ("GCI"), by its undersigned attorneys, hereby opposes the Petition for Elimination of Conditions filed by AT&T Corp. ("AT&T") and Alascom, Inc. ("Alascom") on March 10, 2000 (the "Petition"). AT&T seeks authority to integrate Alascom's operations, repeal the Commission's policy regarding service to the Alaska Bush, and eliminate Alascom's common carrier service tariff obligations after two years. The Commission should deny the Petition because AT&T has failed to demonstrate any change in legal, regulatory, or factual circumstances that would support the relaxation or elimination of existing regulatory conditions. The Recommended Decision of the Alaska Federal-State Joint Board provided the genesis for these conditions,¹ which were then maintained by the Commission when it approved AT&T's application for control of Alascom² and later affirmed upon approval of AT&T's

¹ See Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, Final Recommended Decision, 9 FCC Rcd 2197 (Jt Bd 1993) ("Alaska Market Recommended Decision"), modified and adopted by Memorandum Opinion and Order, 9 FCC Rcd 3023 (1993) ("Alaska Market Order").

² See Applications of Alascom, Inc., AT&T Corporation and Pacific Telecom, Inc. for Transfer of Control of Alascom, Inc. from Pacific Telecom, Inc. to AT&T Corporation, [order], 11 FCC Rcd 732 (1995) ("Alascom Transfer Order").

request to be reclassified as a non-dominant carrier.³ Contrary to AT&T's assertions, grant of the requested relief will impair competition by eliminating the means by which competitive carriers provide certain Bush services in Alaska.

I. BACKGROUND

GCI is an Alaska corporation that provides facilities-based long distance services within the State of Alaska and between Alaska and other points worldwide. GCI has provided competitive interstate telecommunications services in Alaska since 1982 and competitive intrastate services since 1991. As an active competitor in the Alaska market, GCI is well-familiar with the conditions that AT&T and Alascom now wish to shed. It is those conditions that make competition possible in Alaska, including the "Bush."⁴

The framework for the Alaska market structure was established primarily by the Alaska Federal-State Joint Board ("Joint Board"), convened in 1985. Identifying an "incompatibility between rate integration and competition" in Alaska,⁵ the Commission charged the Joint Board with "evaluating the relative merits of the various proposals for the Alaska market."⁶ Five

³ Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3330-35 & n.329 (¶¶ 110-15) (1995) ("AT&T Reclassification Order"); Order on Reconsideration, Order Denying Petition for Rulemaking, and Second Order on Reconsideration in CC Docket No. 96-61, 12 FCC Rcd 20787, 10800-01 (¶¶ 24-25) (1997) ("Reclassification Reconsideration Order").

⁴ "Bush" locations generally are widely dispersed, small communities throughout Alaska, having less than 1,000 citizens. Policies and Rules Governing the Ownership and Operation of Domestic Satellite Earth Stations in Bush Communities in Alaska, Tentative Decision, 92 FCC2d 736, 757 (¶ 61) (1982), aff'd, Final Decision, 96 FCC2d 522 (1984).

⁵ Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, CC Docket No. 83-1376, RM 4436, Notice of Proposed Rulemaking, FCC 86-520 (rel. Sept. 27, 1985) at ¶ 15 ("Alaska Joint Board NPRM").

⁶ Id. at ¶ 2.

objectives guided the Alaska Joint Board considerations: “preservation of universal service; continuation of rate integration; maintenance of revenue requirement neutrality; allowance of market-based competitive entry; and the encouragement of increased efficiency.”⁷ The Alaska Joint Board ultimately produced a Recommended Decision that the Commission adopted with some modifications in 1994. Under the Alaska Market Order, the Commission required, inter alia, that Alascom provide interexchange carrier (“IXC”) services on a non-discriminatory basis at rates reflecting the costs of the service, with separate rates schedules for Bush and non-Bush locations. The costs of service in each category would be developed pursuant to a Cost Allocation Plan developed by Alascom and approved by the Commission. At that time, the Joint Board and the Commission contemplated that both Alascom and AT&T would compete in the Alaska market.

The following year, AT&T acquired Alascom. As part of the transfer of control proceeding, the Commission maintained the Alaska Joint Board conditions and cited favorably Alascom’s status as a separate affiliate of AT&T.⁸ In addition, the Commission found that tariffing and compliance with affiliate transaction rules “should suffice to prevent anti-competitive self-dealing.”⁹ Just a few months later, in October 1995, the Commission again relied upon this collection of regulatory requirements in addressing concerns about continued rate integration and competition for Alaska interexchange service in the AT&T Reclassification proceeding. The Commission granted AT&T’s request for reclassification as non-dominant but at the same time acknowledged that “Alascom is governed by dominant carrier rules where it has

⁷ Alaska Market Recommended Decision, 9 FCC Rcd at 2197 (¶ 1).

⁸ See Alascom Transfer Order, 11 FCC Rcd at 747 (¶ 31).

⁹ Id. at 757 (¶ 55).

a facilities monopoly, namely, the Bush areas.”¹⁰ Because the same facilities monopoly still exists today, the Commission cannot grant the relief requested by AT&T without harming competition.

II. NO LEGAL, REGULATORY, OR FACTUAL CHANGED CIRCUMSTANCES SUPPORT ELIMINATION OR REVISION OF AT&T/ALASCOM REGULATORY REQUIREMENTS

AT&T rests its request for elimination of existing regulatory requirements on the claim that the “passage of time” and alleged “substantial changes have overtaken the factual underpinnings” of the decisions in which the Commission adopted such regulatory requirements.¹¹ Specifically, AT&T suggests that the conclusions reached and the regulatory requirements adopted in the Alaska Market Recommended Decision, the Alaska Market Order, and the Alascom Transfer Order have outlasted their utility because “[c]ircumstances are far different today from what prevailed the last time the Commission thoroughly examined the Alaska market in the late 1980s and early 1990s.”¹² Thus, AT&T claims that changed legal, regulatory, and factual circumstances comprise the predicate for grant of the requested relief. As GCI will demonstrate, the Petition is without merit and must be denied.

A. The Commission Reaffirmed the AT&T/Alascom Regulatory Requirements in the AT&T Reclassification Proceeding

AT&T claims that “significant” legal and regulatory changes have occurred since August 1995, when the Commission adopted the Alascom Transfer Order. According to AT&T, these significant changes are the reclassification in October 1995 of AT&T and Alascom as non-

¹⁰ AT&T Reclassification Order, 11 FCC Rcd at 3334 n. 329 (emphasis added).

¹¹ Petition at 4.

¹² Id.

dominant for domestic interstate interexchange services and international services.¹³ AT&T also notes that “[t]he only relevant exception” to the AT&T and Alascom domestic interstate interexchange service reclassification was for “Alascom’s provision of Common Carrier Services to the Alaska Bush.”¹⁴ GCI strongly disagrees that either the AT&T reclassification or the mere passage of time since reclassification constitutes “significant” legal and regulatory changes that warrant the requested regulatory relief.

The Commission expressly affirmed the continued applicability of the requirements set forth in the Alaska Market Order and the Alascom Transfer Order in its order granting AT&T’s request for non-dominant classification. In the AT&T Reclassification proceeding, many parties, including the State of Alaska, the Alaska Public Utilities Commission (“PUC”),¹⁵ and GCI, raised serious concerns regarding the reclassification of AT&T/Alascom as non-dominant and the probable effect on geographic averaging and rate integration for Alaska consumers and carriers.¹⁶ The Commission determined that these concerns were addressed by existing orders of continued applicability, specifically, the Alaska Market Recommended Decision, the Alaska Market Order, and the Alascom Transfer Order, among others.¹⁷ The Commission expressly

¹³ Id. at 4-5. AT&T also refers to the continued applicability of the rate integration policy pursuant to Section 254(g) of the Communications Act, as amended by the Telecommunications Act of 1996. This statutory provision is not relied on as a change in legal policy, but appropriately as the codification of the Commission’s longstanding rate integration policies.

¹⁴ Petition at 4 n.5.

¹⁵ The Alaska PUC has since been replaced by the Regulatory Commission of Alaska.

¹⁶ See AT&T Reclassification Order, 11 FCC Rcd at 3328-30 (¶¶ 107-09).

¹⁷ Id. at 3330 & n.311 (¶ 110); see also id. at 3330-32 (¶¶ 111-13).

concluded that “AT&T’s reclassification does not affect the continuing effectiveness and validity of those orders.”¹⁸

Moreover, AT&T voluntarily committed to comply with all of the conditions set forth in the Alaska Market Recommended Decision, the Alaska Market Order, and the Alascom Transfer Order.¹⁹ On this basis and in reliance on AT&T’s representations, the Commission determined that its “outstanding orders, together with AT&T’s explicit commitments, adequately address concerns that granting AT&T’s motion will lead to both rate integration for residents of Alaska . . . and geographically averaged rates.”²⁰ Contrary to AT&T’s reliance on the AT&T Reclassification Order as a basis for relief from regulatory requirements, those same requirements were expressly maintained when the reclassification was approved. They are no less appropriate three years later.²¹

B. Grant of the Petition Will Harm Universal Service Efforts for Alaska

AT&T cites no legal or regulatory change in support of the Petition, aside from reclassification. Thus, AT&T has failed to address or even raise the most fundamental underpinning that has guided Alaska market policy for the past thirty years — universal

¹⁸ Id. at 3333 (¶ 113) (emphasis added).

¹⁹ Id. at 3333-34 & n.329 (¶ 114); AT&T Reclassification Reconsideration Order, 12 FCC Rcd at 20806-07 (¶ 38).

²⁰ AT&T Reclassification Order, 11 FCC Rcd at 3335 (¶ 115).

²¹ The RCA Staff has recommended that AT&T/Alascom remain regulated on the state level as a dominant carrier. Consideration of the Reform of Intrastate Interexchange Telecommunications Market Structure and Regulation in Alaska (“RCA Market Structure Proceeding”), Docket R-98-1, Staff Report (Oct. 16, 1998) at 34.

service.²² It is apparent from recent Commission proceedings addressing this matter and from Alascom's own filings to the Regulatory Commission of Alaska that universal service efforts will be harmed if the requested relief is granted.

AT&T proposes to "discontinue" Tariff 11 two years after grant of the petition.²³ In other words, AT&T/Alascom intends to terminate its Common Carrier Services, which are comprised of the transport and switching services used to deliver an IXC's traffic to and from Alascom's point of interconnection with the Alaska local exchange carrier.²⁴ At the same time that AT&T eliminates the ability for IXCs to offer competitive services throughout Alaska — including the Bush — it also appears the Alascom may be positioning itself to withdraw services from these areas entirely. This result would be directly contrary to the Commission's efforts to improve universal service in Alaska to underserved areas.²⁵

In a currently pending RCA proceeding to consider intrastate interexchange market structure, Alascom has candidly admitted that it seeks to shed or significantly alter its carrier of last resort obligations because of competition.²⁶ Alascom described that "competition in the long distance market is undermining the economic incentives of facilities-based IXCs to invest capital

²² See Alaska Market Recommended Decision, 9 FCC Rcd at 2197 (¶ 1) (citing "preservation of universal service" as one of the five objectives guiding resolution of the proceeding); Alaska Market Order, 9 FCC Rcd at 3023 (¶ 1); Alascom Transfer Order, 11 FCC Rcd at 747 (¶ 31).

²³ Petition at 26.

²⁴ See Alaska Market Recommended Decision, 9 FCC Rcd at 2204 (¶ 53).

²⁵ See, e.g., Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 (1999).

²⁶ RCA Market Structure Proceeding, AT&T Alascom Comments (Feb. 4, 2000) (attached hereto).

in the continued modernization of Bush facilities.”²⁷ Alascom’s reluctance to invest in upgrades to its Bush facilities apparently extends to Internet services. Alascom claimed that without “sufficient demand to provide a reasonable opportunity . . . to recover its costs and earn a return, AT&T Alascom cannot justify the capital and other expenditures necessary to provide the [Internet services to the Bush] that are now being demanded.”

Indeed, to some extent, it appears that AT&T has embarked on its own form of redlining with regard to certain services for Alaska. According to Alascom, it cannot compete among AT&T projects for investment in service improvements:

Telecommunications providers, like all other corporations, must evaluate and prudently choose among competing investment opportunities on behalf of their shareholders. AT&T Alascom, and its parent AT&T Corporation, operate in the same manner and must compete in the same capital markets. . . . Thus, when AT&T Alascom requests capital from AT&T for investment to deploy new facilities in rural Alaska, it must compete internally with many other investment alternatives that AT&T could make throughout the United States. Given the available returns, AT&T Alascom has difficulty making a strong economic case to justify new investments for projects in rural Alaska.²⁸

Clearly, according to its own subsidiary, AT&T has no interest in sufficiently funding service to the Alaska Bush. This approach poses a direct threat to universal service in Alaska’s most remote regions, where telephone service provides an essential connection to the rest of the state, country and world. Moreover, AT&T’s apparent disinterest—despite claims to the contrary—in Alascom’s current legal obligation to serve the Bush undermines AT&T’s own argument that regulatory relief is supported by widespread competition in Alaska. Contrary to AT&T’s claim to this Commission that the competitive market throughout Alaska justifies relaxed regulation,

²⁷ Id. at 9.

²⁸ Id. at 15-16.

its subsidiary Alascom has made clear to the Alaska Commission that competition in urban Alaska had made providing service to rural Alaska untenable.

C. AT&T Seeks to Focus Attention on the Alaska Market as a Whole Instead of Interstate Transport and Switching To and From the Bush

The dichotomy between AT&T's statements before this Commission and Alascom's statements before the Alaska Commission demonstrates that AT&T's analysis of competition in the Alaska telecommunications market misses the mark. Given that AT&T and Alascom have already been declared non-dominant, it should be no surprise that long distance competition exists nationally, and even in urban Alaska. Now, AT&T wishes to rely on this competition to eliminate Alascom's Common Carrier Service ("CCS") obligation throughout Alaska, including to the Bush. This request is far different from AT&T's request for non-dominant status in its provision of interstate interexchange services.

The purpose of Tariff 11 is to provide nondiscriminatory rates for interstate interexchange transport and switching, according to two geographic rate zones. One zone is for services to locations defined as part of Bush Alaska and the other zone is for services to non-Bush locations.²⁹ While alternatives to Alascom's CCS service may exist to some extent for non-Bush locations — given that facilities-based competition is not legally prohibited for these areas — no such alternatives exist for most Bush locations. Alascom is the sole provider of transport and switching services between the lower 48 and the Bush and between other points in Alaska and most of the Bush. In this role, Alascom exercises control over bottleneck facilities and is properly treated as dominant for services to the Bush. Thus, as recognized by the Commission in the AT&T Reclassification proceeding, general conditions found to support the

²⁹ Alaska Market Order, 9 FCC Rcd at 2206 (¶ 68).

non-dominant classification do not also support relief from Tariff 11 and other Alaska service obligations.

III. TARIFF 11 MUST REMAIN IN EFFECT UNTIL THE BUSH EXEMPTION IS ELIMINATED AND FACILITIES-BASED COMPETITION HAS AN OPPORTUNITY TO DEVELOP

Alascom is required under the terms of the Market Structure Order to offer common carrier services to interexchange carrier customers under tariff on a nondiscriminatory basis at rates that reflect the costs of services. Separate rates apply for Alaska Bush locations, to ensure that Alascom does not subsidize its service to competitive non-Bush locations with its rates for the non-competitive Bush. In 1995, Alascom filed its initial Tariff 11, which in AT&T's words has been a "burden" on Alascom and the Commission. This so-called "burden," is not the result of useless regulation, as AT&T suggests, but of Alascom's continued practice of attempting to do through the tariff exactly what the tariff is designed to prevent — subsidize its service to the non-Bush through its rates for the Bush, thereby raising the cost of providing services to those Bush communities where other carriers cannot offer provide facilities-based competition. Under these existing and persistent circumstances, it is plain that the Commission should not eliminate or phase-out Tariff 11.

A. AT&T Understates the Significance of Tariff 11 to Competition in the Alaska Market

AT&T would have the Commission believe that Tariff 11 is a dinosaur for the Alaska market — the last vestiges of the days before competition. According to AT&T, the Commission determined that Tariff 11 was "necessary to protect all competitors against the possibility that Alascom might cross-subsidize its competitive non-Bush services by improperly loading costs onto the Bush services where it held a de jure monopoly," but that now, "[e]very

one of those concerns has been overtaken by time and changed circumstances.”³⁰ Once again, AT&T presents its analysis of the interstate interexchange market as representative of an analysis of facilities-based service alternatives for the Bush. This presentation is misleading and inaccurate. In fact, the Alaska market described by AT&T is much like that which began developing in 1982 and improved when equal access was implemented in 1987. Yet, as was the case in the 1980s when competitive efforts began in urban Alaska, the benefits of vibrant competition have been legally denied consumers in rural Alaska. This picture has not changed since the 1980s or the 1990s.

GCI is a customer under Tariff 11, primarily for interstate service to and from Bush locations where GCI is precluded from providing facilities-based service.³¹ GCI has no other alternative for terminating interstate traffic or originating 800 traffic from the Bush locations where Alascom is the sole provider. Although AT&T classifies this traffic as de minimis,³² the underlying service is essential for continued competitive service to and from Bush locations. Thus, AT&T’s listing of satellites providing coverage of Alaska and a talley of fiber cables from Alaska to the lower 48 states are irrelevant because other carriers cannot haul the traffic between the points of interconnection with those facilities and most Bush locations where only Alascom facilities are permitted. Cancellation of Tariff 11 will eliminate this service option where no other carrier has facilities.

³⁰ Petition at 21.

³¹ GCI notes that its DAMA service to approximately one-third of the Bush communities should not be mistaken for permanent facilities-based competition. GCI initially provided such service under a two-year temporary authority, which authority has never been permanently extended or granted. GCI continues to operate these facilities pursuant to special temporary authority while its petition for renewal remains pending.

³² Petition at 21.

Moreover, it is not apparent that AT&T will offer any alternative to its Tariff 11 service, based on its request that the Petition be treated as a request to discontinue the service.³³ Even if AT&T might offer substitute services for Tariff 11, however, as one of the many “alternative” services that it enticingly suggests it will provide if granted regulatory relief, GCI has no expectation that rates charged for such service would provide carriers with competitive opportunity. Alascom’s tariffed rates have been anticompetitive and unlawful since they were implemented, as described in more detail below. If such rates were to be provided under non-dominant, streamlined tariffing, it is logical to expect that these problems would only be exacerbated.

B. Premature Elimination of Tariff 11 Will Foreclose Competition to the Bush

In 1982, the Commission adopted a policy on the ownership and operation of domestic earth stations in Alaska’s Bush locations that permits the licensing of only one satellite earth station in each Bush location to provide interstate message telecommunications services (“MTS”).³⁴ At that time, the Commission found that duplicative facilities in the Bush communities are not in the public interest because one facility can provide all the services that other parties may propose to offer. As a result, Alascom maintains the authorizations to operate the constructed facilities and provide MTS service to every Bush location. AT&T now declares that “Alascom relinquishes any rights under the old ‘Bush Policy’” and requests that the

³³ Id. at 26.

³⁴ Policies and Rules Governing the Ownership and Operation of Domestic Satellite Earth Stations in Bush Communities in Alaska, Tentative Decision, 92 FCC2d 736 (1982), aff’d, Final Decision, 96 FCC 2d 522 (1984); see also RCA Global Communications, Inc., Memorandum Opinion and Order and Authorization, 56 FCC 2d 660, 689 (1975).

Commission “end this historical de jure monopoly.”³⁵ According to AT&T, with GCI competing in more than 50 Bush locations, “the Bush ‘monopoly’ has already been broken.”³⁶ More accurately stated, however, if Tariff 11 is withdrawn at the same time that the Bush restriction is lifted, AT&T will undoubtedly secure a de facto monopoly for these services.

Alascom’s willingness to part with its “vestigial rights” in policies granting it a facilities-based monopoly for service to the Bush is hardly impressive given its posture in the RCA Market Structure proceeding. Angling to shed or share its carrier of last resort obligations, Alascom appears to have no interest in a legal monopoly in the Bush market when competition is forcing down prices in the non-Bush market. If AT&T can be relieved of regulation of service to the Bush, then the existing lack of competition will free it to exit less profitable markets or to forestall resale competition entirely by withdrawing Tariff 11 service. In no way, however, does Alascom’s firmly stated relinquishment of its monopoly mean facilities-based competition is waiting to spring into place if the Commission repeals the longstanding policy.³⁷

GCI offers facilities-based competition in the Bush pursuant to a limited waiver of the Commission’s Bush earth station policy. Based on GCI’s own practical and relevant experience, AT&T’s offer to cap Tariff 11 at its unlawful level for two years before eliminating the only alternative service for the remaining Bush communities is insufficient and dangerous. No timeframe can be set today on the length of time required to develop facilities-based competition in the most remote of Alaska’s villages. While GCI consistently supports the repeal of the

³⁵ Petition at 21.

³⁶ Id.

³⁷ Of course, GCI has long been a proponent of repealing the Commission’s Bush earth station policy, having filed a petition for rulemaking on this matter ten years ago. GCI Petition for Rulemaking, RM-7246 (Jan. 10, 1990). The Petition remains pending.

Commission's Bush earth station policy, Tariff 11 must remain in effect (preferably at lawful levels) until the Commission has determined that removal of the underlying service will not eliminate interstate interexchange services for these communities. Finally, GCI reminds the Commission that the Regulatory Commission of Alaska has not repealed a similar restriction on facilities-based competition at the state level. Thus, for Commission repeal of its policy to have full effect, the RCA must also act, or the Commission must preempt 3 AAC 52.355.³⁸

C. The Commission Should Complete Its Investigation of Tariff 11

AT&T proposes capping its Tariff 11 rates, pledges no future increases for a two-year duration, and claims that grant of its requested relief will not prejudice the pending investigation of the tariff. Thus, AT&T would have the Commission grant it regulatory relief without any determination whatsoever under the pending Tariff 11 investigation. To the extent that any of AT&T's requests should even be considered, the tariff investigation should be completed prior to any Commission action on the Petition. GCI expects that the outcome of that investigation will demonstrate that the competitive market in Alaska has been hindered by unlawful Tariff 11 rates since its inception in January 1996.

Every Tariff No. 11 transmittal has been determined to raise significant questions of lawfulness.³⁹ On its face, the Alascom tariff clearly manipulates switching costs. The Alascom

³⁸ General Communication, Inc., Petition for Preemption Pursuant to Section 253 of the Communications Act of 1934 (CC Docket No. 98-4) (filed Jan. 21, 1998).

³⁹ ALASCOM, INC., Tariff F.C.C. No. 11, Transmittal No. 790, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995) (suspending and investigating Alascom Transmittal Nos. 790 and 797); Transmittal No. 807, Order, 11 FCC Rcd 10833 (1996) (suspending and investigating Alascom Transmittal No. 807); Transmittal No. 852, Order, 12 FCC Rcd 3646 (Comp. Pric. Div. 1997) (suspending and investigating Alascom Transmittal No. 852); Transmittal No. 921, Order, 13 FCC Rcd 187 (Comp. Pric. Div. 1997) (suspending and investigating Alascom Transmittal No. 921); Transmittal No. 941 and 942, Order, 13 FCC Rcd 4659 (Comp. Pric. Div. 1998)

(continued...)

tariff proposes different rates for Bush and non-Bush switching services.⁴⁰ Alascom, however, has configured its network to use a switch in Anchorage to provide both Bush and non-Bush services.⁴¹ There are no Bush switches. According to the Alascom Cost Allocation Plan, switching costs are to be attributed based on the overall proportion of traffic served by the toll carriers. Because there are no switches located in the Bush and thus, no switches used solely for the provision of either Bush or non-Bush services, there is no basis for different Bush/non-Bush per minute rates. Since the initial Tariff 11 filing, however, Alascom has filed different Bush and non-Bush switching rates. Indeed, in this most recent filing, Alascom has increased its switching rates for the Bush locations and decreased its rates for the non-Bush locations, taking advantage of its monopoly position in the Bush to improve its competitive position outside the Bush.

The other Tariff 11 rate component, transport, raises similar concerns. Alascom's tariff provides separate rates for Bush, non-Bush and Alaska/CONUS (between Anchorage and Portland, Oregon). The transport rates associated with each of these rate elements indicate inconsistencies produced by the Alascom cost study, as described in GCI's Petition to Suspend and Investigate.⁴² For example, the Bush transport rates have increased significantly, even though these rates should be expected to decrease due to upgrades to the Alascom network from

(..continued)

(suspending and investigating Alascom Transmittal Nos. 941 and 942); Transmittal No. 1088, Order, 15 FCC Rcd 6 (Comp. Pric. Div. 1999).

⁴⁰ Currently, non-Bush switching services are priced at 2.22 cents per minute while Bush switching services are priced at 4.08 cents per minute. See Alascom Transmittal No. 1088.

⁴¹ Alascom at one time used three switches located in Anchorage, Fairbanks, and Juneau, the three largest urban centers in Alaska.

⁴² See Petition of GCI to Suspend and Investigate, Transm. No. 1088 (Dec. 9, 1999).

analog earth stations to digital DAMA technology. Although investments are required for the upgrades, use of DAMA technology reduces the requirements for satellite transponders, which are the largest expense associated with transport by satellite. Thus, the Alascom upgrades should have resulted in a reduction in satellite costs by close to half from the previous year, but Alascom's cost support demonstrates a mere six percent reduction.⁴³

To date, the Commission has not yet issued an order designating the issues to be investigated in the pending consolidated proceeding. In light of AT&T's Petition, the investigation should be commenced without further delay. Moreover, as part of that investigation, the Commission should require Alascom to provide all cost models and its cost study for Tariff 11 in electronic format for full analysis by interested parties.

IV. AT&T'S VERSION OF "REGULATORY BLACKMAIL" FAILS TO ESTABLISH THAT INTEGRATION OF AT&T AND ALASCOM IS IN THE PUBLIC INTEREST

AT&T's Petition essentially offers a quid pro quo: if the Commission will remove certain regulatory requirements, then Alaskans will benefit from "more efficient service and increased service offerings."⁴⁴ According to AT&T, it can make such benefits available only if the Commission will remove the existing requirements that AT&T and Alascom file and maintain separate FCC tariffs, comply with the affiliate transaction rules, and maintain Alascom as a separate subsidiary.⁴⁵ AT&T fails to explain with any specificity, however, why Alaskans are being denied services that AT&T otherwise apparently would be inclined — and able — to offer. Moreover, AT&T's arguments for corporate integration and resulting relief from Commission

⁴³ See id. at 4.

⁴⁴ Petition, Summary at i.

⁴⁵ Id. at 2.

tariffing and separate affiliate transactions rules presumes the elimination of Tariff 11. For as long as Tariff 11 is in place, however, separate accounting procedures are required to establish rates for CCS.

A. AT&T Is Already Required to Offer Its Services to Alaska Consumers

According to AT&T, “integration of Alascom operations would allow AT&T to offer the full range of interstate services that it offers in the lower 48 states.”⁴⁶ Alascom also “is convinced that ready availability of some AT&T products would be efficient and accepted in the Alaska market,” even though the provision of such products have allegedly been “impede[d]” by “the costs and barriers required by regulation.”⁴⁷ Neither AT&T nor Alascom identify which services are currently being denied to Alaskans or why such services are not available. AT&T’s offer to accept regulatory relief in exchange for expanded services appears to be nothing more than something for nothing.

More importantly, AT&T has not explained how it is satisfying Section 254(b)(3) of the Communications Act by withholding services it is plainly able to provide from the Alaska market. This section provides that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonable comparable to rates charged for similar services in urban areas.⁴⁸

⁴⁶ Id.

⁴⁷ Id. at 13.

⁴⁸ 47 U.S.C. § 254(b)(3); see also Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8803 (¶ 52) (finding that “our universal service policies should strike a fair and reasonable balance among all of the principles identified in section 254(b)”).

For unexplained reasons, however, AT&T has determined not to provide unidentified interexchange services to Alaska through its subsidiary Alascom, even though “[v]irtually all Alascom tariff materials mimic the rates and terms contained in AT&T’s tariffs.”⁴⁹ Thus, while AT&T apparently provides services to Alaska consumers based on geographically averaged rates, it does so only for selected services. This strategy hardly ensures that customers in Alaska receive “interexchange services . . . that are reasonably comparable to those services provided in urban areas.” As part of this proceeding, GCI urges the Commission to investigate how AT&T may be discriminating against Alaska customers in this manner.

B. The Affiliate Transaction Rules Remain Appropriate for AT&T and Alascom

AT&T characterizes the requirements that Alascom be maintained as a separate entity as “imposed without thorough consideration” and the resulting applicability of the affiliate transaction rules “applied reflexively” to the transactions between the two companies.⁵⁰ This is revisionist history. The Commission approved these requirements in the Alascom Transfer Order — and reaffirmed their continued applicability in the AT&T Reclassification Order — due to well-established concerns regarding the likelihood for “anti-competitive self-dealing.”⁵¹ These concerns remain valid today and, due to the Alaska market and network structure, are unaffected by the AT&T and Alascom reclassification.

⁴⁹ Petition at 14 n.23.

⁵⁰ Id. at 14, 16.

⁵¹ Alascom Transfer Order, 11 FCC Rcd at 755-57 (¶¶ 53-55). The Commission also determined that maintaining Alascom’s separate identity was also important to ensure needed improvements to facilities serving Bush locations. Id. at 747 (¶ 31). Apparently, this remains a concern today. See Part II.B, supra (describing Alascom’s current difficulties securing AT&T funding for Bush facility improvements).

Because Alascom enjoys a legal monopoly in the Bush while facing actual or potential competition only in non-Bush areas,⁵² Alascom can manipulate the assignment of costs between Bush and non-Bush areas to the disadvantage of both carriers and customers. As a result, Alascom is required to specify in its Cost Allocation Plan the procedures for computing its Bush and non-Bush costs. By the same token, the same could occur with respect to the assignment of costs between Bush costs and other AT&T costs. In order to maintain the integrity of Tariff 11 — which GCI demonstrated is necessary to continue developing competitive interstate interexchange service, particularly to the Bush — the costs and minutes for CCS service must be kept separate from all other AT&T costs. Therefore, Alascom must remain a separate entity from AT&T's other domestic interstate interexchange operations and the affiliate transaction rules must continue to apply to monitor for any possible cost shifting between AT&T and Alascom.

C. Alascom's Tariff Filing Requirements Are De Minimis

AT&T decries the continued maintenance of a separate tariff for Alascom, which it claims “burdens AT&T unnecessarily and consumes the Commission’s resources without need.”⁵³ AT&T specifically cites the payment of \$54,810 in FCC filing fees as evidence of its “burden.”⁵⁴ In 1999 alone, AT&T filed almost 300 individual tariff filings, constituting over one tariff transmittal per business day. Against this background, Alascom’s tariff filing requirements hardly constitute persuasive evidence for integrating Alascom into AT&T’s corporate operations.

⁵² GCI was granted a temporary partial waiver of the Bush policy to provide DAMA services to 50 Bush communities. Petition of General Communication, Inc. for a Partial Waiver of Bush Earth Station Policy, Memorandum Opinion and Order, 11 FCC Rcd 2535 (1996).

⁵³ Petition at 14.

⁵⁴ Id. at 14 n.23.

V. AT&T'S PETITION WARRANTS COMMISSION ACTION DIFFERENT FROM THAT REQUESTED

GCI strongly opposes AT&T's request for elimination of conditions, which is not supported by its Petition. GCI offers instead an alternative approach that will serve the primary goal of preserving and promoting competition in Alaska, while at the same time eliminating any regulatory requirements that no longer or never furthered this goal.

A. The Commission Should Immediately Lift the Restriction on Facilities-Based Competition to the Bush and Grant GCI Permanent Earth Station Authorizations

GCI has sought the elimination of this ill-conceived policy for over ten years. For the majority of those years, Alascom vigorously opposed GCI's efforts, and only after AT&T acquired Alascom did Alascom change its public position on facilities-based competition to the Bush.⁵⁵ Regardless of Alascom's actual reasons for disclaiming any continued rights to its monopoly, GCI agrees that elimination of that monopoly is long overdue. The Commission should renounce the longstanding Bush policy and grant GCI permanent earth station authorizations to provide this service. In addition, the Commission must also grant GCI's Petition for Preemption of the Alaska statute that imposes the same restriction.

B. The Commission Should Complete its Pending Investigation of Tariff 11, including Alascom's Cost Allocation Plan, and Permit Alascom to File Under Price Cap Regulation

As GCI has demonstrated, the presence of facilities-based competition to the Alaska Bush cannot be presumed simultaneously with the repeal of the Bush policy. It will take time for such competition to develop and, until the Commission has determined that it is, cancellation or

⁵⁵ See Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy, File No. 122-SAT-WAIV-95, Alascom's Opposition (Aug. 11, 1995) and Alascom Reply (Sept. 6, 1995).

steps toward cancellation of Tariff 11 are dangerously premature. Thus, it is clear that Tariff 11 must be maintained. AT&T's offer to cap its Tariff 11 rates, however, is an empty gesture. The tariffed rates are on their face discriminatory and unlawful, and the Commission must proceed with and complete its investigation of this tariff, which has been pending since Alascom first introduced it in 1996.

In addition, as part of or in tandem with the tariff investigation, the Commission should complete its proceeding regarding Alascom's Cost Allocation Plan ("CAP"). Alascom filed its first CAP on August 29, 1994, but it submitted a revised CAP on July 3, 1995 after the Common Carrier Bureau ("Bureau") raised concerns regarding the filing. The Bureau subsequently approved the revised CAP, but in response to GCI's Petition for Reconsideration, the Commission required Alascom to modify the factor used in the CAP for allocating satellite costs.⁵⁶ Alascom's Application for Review of the Commission order remains pending, and the Commission should complete its review on the merits before completing and closing any Tariff 11 investigation. This approach is consistent with Alascom's prior arguments that initiation of a rate case would be premature should resolution of pending CAP issues changes the "fundamental legal and regulatory underpinnings of Tariff 11."⁵⁷

Upon the completion of the investigation and CAP review, initial rates may be set. Alascom could then be permitted to file the tariff under price cap regulation to relieve AT&T of the professed burden of maintaining a rate-of-return tariff. In the Alascom Transfer Order,

⁵⁶ Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs, Order, 10 FCC Rcd 9823 (Com. Car. Bur. 1995), clarified by Memorandum Opinion and Order, 12 FCC Rcd 8484 (1997), appl. for review pending.

⁵⁷ See Investigation of Alascom, Inc., Interstate Transport and Switching Services; Alascom, Inc. Revisions to Tariff F.C.C. No. 11, Order, 13 FCC Rcd 187, 190 (¶ 10) (Comp. Pric. Div. 1997) (describing Alascom Response to ATU-LD Petition to Suspend).

AT&T and Alascom expressly sought the Commission's approval for waiver of Section 61.41(c) (the "all or nothing" rule) to allow Alascom to file rate-of-return based tariffs for its interstate interexchange transport and switching services, which the Commission granted.⁵⁸ Now, AT&T claims that the annual tariff revisions "have required intense efforts to properly develop unique rate formulas based upon essentially obsolete rate-of-return methodologies,"⁵⁹ though this is the methodology that AT&T and Alascom requested. GCI would have no objection, however, to Alascom maintaining Tariff 11 under a price cap methodology, whereby the capped rates would be set following Commission completion of the pending investigation. After that time, AT&T would be relieved of its "intense efforts" to develop annual rates for Tariff 11 services because rates would be set according to the less onerous price cap methodology. This approach will relieve AT&T and Alascom of the burdens of ratemaking while still keeping the tariff in tact.

C. Any Request for Relief from Conditions Arising Out of the Alaska Market Order Must Be Presented to an Alaska Federal-State Joint Board

AT&T claims that there is "no need" to refer the issues it has raised to a federal-state joint board because the issues are "corporate in nature, having no relationship to Part 36 of the Commission's Rules, or otherwise affecting jurisdictional cost considerations."⁶⁰ This interpretation of the requested relief belies the history of the conditions addressed by the Petition. The Commission convened the Alaska Federal-State Joint Board (CC Docket No. 83-1376) in 1983 to "[t]o assist [it] in evaluating the relative merits of the various proposals for the Alaska

⁵⁸ Alascom Transfer Order, 11 FCC Rcd at 742 (¶ 20).

⁵⁹ Petition at 22.

⁶⁰ Id. at 18.

market”⁶¹ Referral of market structure issues was “discretionary” and referral of issues related to separations procedures was “mandatory.”⁶² Of course, the significance of the Alaska Market Recommended Decision, adopted with modification by the Commission in the Alaska Market Order, was the structure imposed for the Alaska interexchange market. At that time, the Commission referred the issues to a Joint Board because a decision would “also involve consideration of the effects any changes will have on intrastate rates and service in Alaska.”⁶³

Similarly in this case, AT&T’s proposal to change its relationship with Alascom, as well as Alascom’s position taken before the Alaska Commission in its proceeding to consider the intrastate market structure, strongly suggest that any decision must necessarily “also involve consideration of the effects any changes will have on intrastate rates and service in Alaska.” Thus, referral of these issues to a Joint Board is once again appropriate. Moreover, by AT&T’s own admission, “CCS and its underlying procedures were established in [the Alaska Market] decisions.”⁶⁴ Given that the relief sought involves the elimination of those same conditions, the need for Federal-State Joint Board consideration of AT&T’s request to eliminate conditions is apparent.

D. The Commission Should Investigate AT&T’s Withholding of Certain Services to Alaska

AT&T has stated in its Petition that “[t]here are a number of service offerings available from AT&T in the lower 48 states which are not currently offered in Alaska” and that more

⁶¹ Alaska Federal-State Joint Board NPRM at ¶ 2.

⁶² Id.

⁶³ Id. at ¶ 14.

⁶⁴ Petition at 18.

competitive alternatives to Alascom's Tariff 11 services may exist "as an integrated AT&T increases its range of services in Alaska."⁶⁵ AT&T and Alascom's practice of withholding reasonably comparable services available to urban customers from rural customers is contrary to Section 254(b)(3) of the Communications Act. In addition, AT&T may be harming interstate interexchange competition by withholding cost effective alternatives to Alascom's CCS services. Thus, based on AT&T's own admissions, the Commission should investigate immediately whether AT&T is withholding services in a manner harmful to consumers and to competition.

E. The Commission Should Dismiss AT&T's "Petition" for Authority under Section 214 to Discontinue Service

AT&T has requested that the instant Petition "be deemed to comply with the Section 214 discontinuance requirements" with respect to its request for Alascom to cancel Tariff 11 in two years.⁶⁶ GCI has demonstrated that Alascom's Tariff 11 obligations must continue for the sake of competition for consumers in Bush locations, and on this basis, Alascom must not be relieved of the statutory requirements under Section 214 for discontinuance of service. Particularly, Alascom must be required to file a formal application in accordance with the Commission's rules,⁶⁷ that may then be served upon public representatives as required under law.⁶⁸ It is especially important that each state Governor is notified due to the possible effect on communications from Alaska to every state and from every state to Alaska.

⁶⁵ Id. at 13, 22.

⁶⁶ Id. at 26.

⁶⁷ 47 C.F.R. § 63.71.

⁶⁸ 47 U.S.C. § 214(b).

The Commission must also determine whether the application should be treated as a request for discontinuance of a dominant service given that these services are the only facilities-based services to the Bush locations. In addition, no public notice has been provided to date of Alascom's intention to utilize the petition process in lieu of standard Section 214 discontinuance requirements. The Public Notice of AT&T's Petition makes no mention of this requested special relief.⁶⁹

F. The Commission Should Deny AT&T's Request for Waiver of the Subscriber Carrier Selection Rules

In the event that AT&T is permitted to offer interstate interexchange services directly to Alaska customers, it requests a waiver of the Commission's carrier selection rules. Grant of a waiver would permit AT&T to transfer Alascom's retail customers to AT&T without obtaining each subscriber's authorization and verification.⁷⁰ AT&T claims that a waiver is satisfied because "customers already perceive that they are being served by AT&T."⁷¹

AT&T has not demonstrated that "special circumstances warrant deviation from the general rule and such deviation will serve the public interest."⁷² First, AT&T seeks to avoid the carrier selection rules so that all Alascom customers would automatically become AT&T customers. Coupled with AT&T's proposal for opening the Bush to competition as an excuse for

⁶⁹ See "Pleading Cycle Established for Comments on AT&T and Alascom's Petition for Structural and Other Regulatory Relief," CC Docket No. 00-46, Public Notice, DA 00-603 (rel. Mar. 17, 2000).

⁷⁰ Petition at 25.

⁷¹ Id.

⁷² Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); 47 C.F.R. § 1.3.

canceling Alascom's Tariff 11, AT&T essentially seeks to continue depriving residents of most Bush communities of any choice in facilities-based long distance carrier. It will be difficult for any facilities-based carrier to provide service immediately or in the near term, and at the same time, competitively-priced options for resale service will be eliminated. Thus, AT&T will be the only effective provider for these customers. On this basis, any subscriber transfers to AT&T should be prohibited until the Commission deems that facilities-based competition has developed in the Bush.

Second, AT&T seeks not only to circumscribe the Commission's rules, but also to avoid the basic steps that other carriers requesting a waiver have taken.⁷³ The Commission has established a preference for those situations where a carrier certifies a two-step notification process, with customer notification both before and after the conversion occurs.⁷⁴ AT&T, however, intends only to notify customers in a "welcoming package" of the "regulatory changes that now permit them to be served directly by AT&T."⁷⁵ This does not satisfy even the Commission's standard requirements for waiver. Against this background, subscribers should at

⁷³ See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; International Exchange Communications, Inc.'s Requests for Waiver, CC Docket No. 94-129, Order, DA 00-742 (rel. Mar. 31, 2000) at ¶ 6 (describing a two-step process for notification of customers); Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Broadwing Telecommunications, Inc. Petition for Waiver, CC Docket No. 94-129, Order, DA 00-748 (rel. Mar. 31, 2000) at ¶ 7 (describing a two-step process for notification of customers).

⁷⁴ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Sprint Communications Company, L.P. Petition for Waiver, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000) at ¶ 7.

⁷⁵ Petition at 25. Elsewhere in its Petition, however, AT&T relies on the distinct identities between AT&T and Alascom as support for its requested relief. AT&T cannot have it both ways.

least be afforded their right to select affirmatively to be transferred to AT&T from Alascom (or not).

VI. CONCLUSION

Based on the foregoing, GCI respectfully requests that the Commission deny AT&T's Petition for Elimination of Conditions. Instead, GCI requests that the Commission:

- (1) repeal the Bush policy, grant permanent earth station authorizations to GCI to serve these areas, and preempt the Alaska statutory prohibition on facilities-based competition in the Bush;
- (2) complete its investigation of Alascom's Tariff 11, including the Cost Allocation Plan, and upon completion, permit Alascom to file future rates under price cap regulation;
- (3) refer any request for relief from conditions arising out of the Alaska Market Order to an Alaska Federal-State Joint Board;

- (4) investigate AT&T's withholding of certain services from Alaska customers;
- (5) deny the Petition in its capacity as an Application under Section 214 for authority to discontinue Alascom CCS services; and
- (6) deny the Petition in its capacity as a Petition for Waiver of the Commission's subscriber carrier selection rules.

Any other action will harm interstate interexchange competition for Alaska, particularly to the Alaska Bush.

Respectfully submitted,



Joe D. Edge
Tina M. Pidgeon
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 842-8812
(202) 842-8465 FAX

Attorneys for
GENERAL COMMUNICATION, INC.

April 17, 2000

CERTIFICATE OF SERVICE

I, Susan C. Normandin, do hereby certify that a copy of the foregoing Opposition of General Communication, Inc. was sent by hand-delivery and first-class mail, as indicated, this 17th day of April, 2000, to the following:

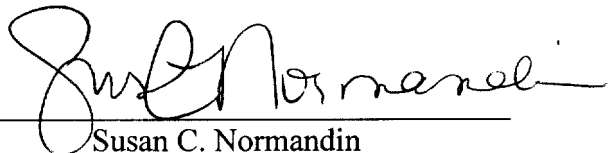
Michelle M. Carey, Chief*
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W. – Room 5-C122
Washington, D.C. 20554

Janice M. Myles*
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W. – Room 5-C327
Washington, D.C. 20554

Mark C. Rosenblum, Esq.
Judy Sello, Esq.
AT&T Corp.
Room 1135L2
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Charles R. Naftalin, Esq.
Koteen & Naftalin, L.L.P.
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

ITS*
1231 20th Street, N.W.
Washington, D.C. 20036



Susan C. Normandin

* Hand-delivery